

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DEANDRE DAVIS,

PETITIONER

v.

No. 2:05CV194-P-A

STATE OF MISSISSIPPI, ET AL.

RESPONDENTS

ORDER

This matter comes before the court on the state's January 13, 2006, motion to dismiss the instant petition for a writ of *habeas corpus* for failure to exhaust Ground Three of the instant petition (insufficiency of the evidence). The petitioner responded to the motion February 2, 2006, requesting that the court stay the instant proceedings and hold decision on the matter in abeyance until the petitioner could exhaust Ground Three in state court. In its memorandum opinion of March 20, 2006, the court instead gave the petitioner the opportunity to amend his petition to exclude the unexhausted ground. The petitioner so amended his federal petition on April 5, 2006. The state's January 13, 2006, motion to dismiss the petition for failure to exhaust is hereby **DENIED**, as the petitioner has now excluded the unexhausted ground.

SO ORDERED, this the 3rd day of May, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE